SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

247 ASSOCIATES,

v. Tax Docket No. 7786-98

DISTRICT OF COLUMBIA

ORDER

This case is before this Court pursuant to the District's Motion *in Limine* to Strike Appraisal Report. This particular Motion was filed on July 31, 2000. Pursuant to an order of this Court, the District has filed a copy of the Appraisal Report so that the Court can perform an adequate review of this document.

As of August 9, 2000 the Petitioner had not filed an Opposition to the Motion. Consequently, the Court may treat the Motion as conceded.

Nevertheless, to be cautious, the Court has made its own independent review of the Appraisal Report and finds that the Motion is meritorious.

Content of the Report. The document in question is entitled, "Limited Appraisal – Summary Report of A Vacant Lot NWC of 13th & L Streets Square 247, Lot 97 Washington, D.C." This document is labeled as "A report prepared for R.T. Lyman[,] P & L Investments, LLC" and bears an "inspection date" of January 26, 1999, an "appraisal date" of April 1, 1999, and a "report date" of February 9, 1999.

The conclusion set forth in the report is that "the market value on April 1, 1999 of the property in fee simple estate is $8,400,000."

The property is described in the Report as "relatively level, asphalt paved . . . currently used as a parking lot, an interim use." The "executive summary" at the beginning of the Report states that this is a "limited appraisal/sales comparison approach only."

Issues Raised In the Motion. The District contends that, for several reasons, the document described as the Petitioner's "Limited Appraisal" is irrelevant to the *de novo* issues in this case.

Principally, the District emphasizes that the relevant valuation period is Tax Year 1998. As the Petitioner set forth in its Petition herein, the

assessment that is the subject of this appeal is the assessment issued for Tax Year 1998, encompassing the period of October 1, 1997 through September 30, 1998. The District observes that the relevant valuation date is January 1, 1997.

The District is correct in its complaint that a valuation for some subsequent date – particularly as late as April 1, 1999 is not relevant. The District also argues that the Report should be stricken because it is based upon the sales approach to value, using numerous sales that did not occur until after January 1, 1997.

While the District rightfully criticizes the use of irrelevant comparison sales, this point more properly goes to the weight that should or should not be accorded this evidence.

The Court focuses on the issue of relevancy, because this strikes at the heart of admissibility. If the appraisal would be inadmissible on grounds of lack of relevance, there is no reason why the Report should not be stricken prior to trial. There is no virtue in waiting until the commencement of trial to eliminate irrelevant evidence.

As the trier of fact in a *de novo* proceeding, the Court is in the best position to determine as a threshold matter whether expert opinion would

even be helpful. This Report (and the attendant testimony to explain it) would not assist this Court in any way. The Court itself could not deviate from the relevant valuation date. Moreover, the Court would never indulge in looking to sales after January 1, 1997 in order to find pertinent comparisons.

There does not appear to be any logical reason for the taxpayer to rely upon this particular appraisal. The Court notes parenthetically that this Report was produced for an entity other than the taxpayer. The taxpayer herein, for unknown reasons, did not choose to use an appraisal that was prepared for litigation purposes. This is a standard practice. It is not the Court's role to quibble about litigation tactics. However, the Court must take the case as the Court finds it. This appraisal is simply the wrong kind of document for use in this case.

WHEREFORE, it is by the Court this 11th day of August, 2000

ORDERED that the Motion *In Limine* to Strike Appraisal Report is **granted**; and it is

FURTHER ORDERED that the document known as Limited Appraisal, dated February 9, 1999, tendered by the Petitioner to the District

in discovery is hereby stricken and may not be used as evidence in this case.

No testimony based upon this appraisal will be admitted.

Cheryl M. Long
Judge

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Claudette Fluckus
Tax Officer

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

247 ASSOCIATES, LTD.

v. Tax Docket No. 7786-98

DISTRICT OF COLUMBIA

BELL ATLANTIC-WASHNGTON, D.C., INC.

V. Tax Docket No. 7787-98

DISTRICT OF COLUMBIA

BELL ATLANTIC-WASHINGTON, D.C. INC.,

v. Tax Docket No. 7788-98

DISTRICT OF COLUMBIA

ORDER

These cases are all before this Court for consideration of the Reply of Counsel, regarding this Court's orders to show cause why these cases should not be dismissed or why counsel should not be held in contempt for failure to appear in court at status hearings on August 16, 1999.

The essence of the explanation of Petitioners' counsel is that he "mis-calendared" these cases and was confused about when he was obligated to be in court. Since the District has no particular way of refuting such an explanation, the Court will accept the explanation of counsel.

Nevertheless, it is worth noting that counsel has committed this same error previously in these cases. The records of the cases reflect that the Hon. Kaye K. Christian also issued show cause orders, because of counsel's previous failure to appear in court on March 29, 1999. In that instance, counsel eventually filed a pleading in which he also states that his own staff "mis-calendared" the case for March 30, 1999. While Judge Christian accepted this excuse in open court, this episode should have served as a wake-up call to counsel. All Tax Division status hearings are scheduled for Mondays. This has been obvious to all tax lawyers for many years.

This Court will not tolerate a third instance of counsel being unable or unwilling to do what is necessary to keep track of his obligations to appear in court. This is especially important because he represents Petitioners who have a clear burden of going forward. The issue of timely pursuit of cases is not without consequences to the District of Columbia. This is because if a Petitioner prevails and is deemed to be entitled to a refund, such taxpayer normally is due interest on such refund.

Counsel is forewarned. If he again fails to appear in court for any reason other than a verified medical emergency (such as being hospitalized) or an obvious act of God, this Court will consider imposing sanctions. Sanctions may include an order absolving the District of paying any interest on any refund that is obtained in this litigation. For this, counsel can answer to his clients. Clients may have their own cause of action to resolve such problems. On the whole, the notion that counsel or his staff "mis-calendared" these cases will not be accepted as a continuing excuse for failure to proceed.

Upon further inspection of the records herein, it is evident that counsel for the Petitioners did not include a certificate of service on his Reply, indicating that a copy had been served upon Government counsel. This is required.

WHEREFORE, it is by the Court this 21st day of December, 1999

ORDERED that the order to show cause matter is discharged; and it is

FURTHER ORDERED that all counsel shall appear before this Court for a status hearing on **February 28, 2000 at 9:30 a.m.** in courtroom 117 regarding all three cases captioned herein above. At that time, all counsel shall be prepared to inform the Court as to whether any settlement has been achieved or whether these cases must be scheduled for pre-trials and trials; and it is

FURTHER ORDERED that Petitioners' counsel shall include a certificate of service in all of his pleadings. If such certificate of service is missing, the Clerk of the Court shall reject his pleadings.

Cheryl M. Long
Judge

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